



[Billing Code: 4810–31–U]

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 5

[Docket No. TTB–2012–0001; Notice No. 126]

RIN: 1513–AB91

Standards of Identity for Pisco and Cognac

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Alcohol and Tobacco Tax and Trade Bureau proposes to amend its regulations setting forth the standards of identity for distilled spirits to include Pisco as a type of brandy that must be manufactured in accordance with the laws and regulations of either Peru or Chile, as appropriate, governing the manufacture of those products. This change will remove “Pisco brandy” from the list of examples of geographical designations in the distilled spirits standards of identity. This document also includes a technical correction to remove “Cognac” from the same list of examples. These changes will provide greater clarity in distilled spirits labeling.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may send comments on this document to one of the following addresses:

- <http://www.regulations.gov> (via the online comment form for this document as posted within Docket No. TTB–2012–0001 at “Regulations.gov,” the Federal e-rulemaking portal);
- Mail: Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or
- Hand delivery/courier in lieu of mail: Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

See the **Public Participation** section of this document for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this document, selected supporting materials, and any comments we receive about this proposal at <http://www.regulations.gov> within Docket No. TTB–2012–0001. A direct link to this docket is posted on the TTB Web site at <http://www.ttb.gov/spirits/spirits-rulemaking.shtml> under Notice No. 126. You also may view copies of this document, all related supporting materials, and any comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20005. Please call 202–453–2270 to make an appointment.

FOR FURTHER INFORMATION CONTACT: Karen E. Welch, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street

NW., Box 12, Washington, DC 20005; telephone 202–453–1039, ext. 046; email ITD@ttb.gov.

SUPPLEMENTARY INFORMATION:

Background

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), codified in the United States Code at 27 U.S.C. 205(e), authorizes the Secretary of the Treasury (Secretary) to prescribe regulations relating to the packaging, marking, branding, labeling, and size and fill of containers of alcohol beverages that will prohibit consumer deception and provide the consumer with adequate information as to the identity and quality of the product. Section 105(e) of the FAA Act also generally requires bottlers and importers of alcohol beverages to obtain certificates of label approval prior to bottling or importing alcohol beverages for sale in interstate commerce. Regulations implementing those provisions of section 105(e) as they relate to distilled spirits are set forth in part 5 of title 27 of the Code of Federal Regulations (27 CFR part 5). The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01 (Revised), dated January 21, 2003, to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

Certificates of Label Approval

TTB's regulations prohibit the release of bottled distilled spirits from customs custody for consumption unless an approved Certificate of Label Approval (COLA) covering the product has been deposited with the appropriate Customs officer at the port of entry. See 27 CFR 5.51. The TTB regulations also generally prohibit the bottling or removal from a plant of distilled spirits unless the proprietor possesses a COLA covering the labels on the bottle. See 27 CFR 5.55.

Classes and Types of Spirits

The TTB labeling regulations require that the class and type of distilled spirits appear on the product's brand label. See 27 CFR 5.32(a)(2) and 5.35. Those regulations provide that the class and type must be stated in conformity with § 5.22 of the TTB regulations (27 CFR 5.22) if defined therein. Otherwise, the product must be designated in accordance with trade and consumer understanding thereof, or, if no such understanding exists, by a distinctive or fanciful name, and in either case (with limited exceptions), followed by a truthful and adequate statement of composition.

Section 5.22 establishes standards of identity for distilled spirits products and categorizes these products according to various classes and types. As used in § 5.22, the term "class" refers to a general category of spirits, such as "whisky" or "brandy." Currently, there are 12 different classes of distilled spirits recognized in § 5.22, including whisky, rum, and brandy. The term "type" refers

to a subcategory within a class of spirits. For example, “Cognac” is a type of brandy, and “Canadian whisky” is a type of whisky.

Brandy and Pisco

Brandy is Class 4 in the standards of identity, where it is defined in § 5.22(d) as “an alcoholic distillate from the fermented juice, mash, or wine of fruit, or from the residue thereof, produced at less than 190° proof in such manner that the distillate possesses the taste, aroma, and characteristics generally attributed to the product, and bottled at not less than 80° proof.”

“Pisco” is a term recognized by both the governments of Peru and Chile as a designation for a distilled spirits product made from grapes. However, “Pisco brandy” is not currently listed as a type of brandy in Class 4. Rather, it is provided in Class 11, at § 5.22(k)(3), as an example of a geographical name that is not a name for a distinctive type of distilled spirits, and that has not become generic.

International Agreements

Pursuant to the United States–Peru Trade Promotion Agreement, the United States recognized Pisco Perú as a distinctive product of Peru (Article 2.12(2) of the Agreement). Accordingly, the United States agreed not to permit the sale of any product as Pisco Perú unless it has been manufactured in Peru in accordance with the laws and regulations of Peru governing Pisco.

In addition, pursuant to the United States–Chile Free Trade Agreement, the United States recognized Pisco Chileno (Chilean Pisco) as a distinctive product of Chile (Article 3.15(2) of the Agreement). Accordingly, the United

States agreed not to permit the sale of any product as Pisco Chileno (Chilean Pisco) unless it has been manufactured in Chile in accordance with the laws and regulations of Chile governing the manufacture of Pisco.

In like manner, Peru and Chile agreed, respectively, to recognize Bourbon Whiskey and Tennessee Whiskey (which is defined in both Agreements as a straight Bourbon Whiskey authorized to be produced only in the State of Tennessee), as distinctive products of the United States, and not to permit the sale of any product as Bourbon Whiskey or Tennessee Whiskey unless it has been manufactured in the United States in accordance with the laws and regulations of the United States governing the manufacture of Bourbon Whiskey and Tennessee Whiskey. (TTB notes that there are alternative spellings for the same term—“whisky” in the TTB regulations in 27 CFR part 5 and “whiskey” in the Agreements with Peru and Chile.)

Pisco Production

“The Oxford Companion to Wine” (Jancis Robinson, ed., Oxford University Press, 2d ed., 2001, p. 536) reports that Spanish colonists began producing aguardiente (grape spirits) in both Peru and Chile since the sixteenth century, in addition to describing the spirits produced in the area near the town of Pisco in Peru. Further, “The Oxford Companion to Wine” says ““Pisco” is an aromatic brandy made in Peru, Chile, and Bolivia, mainly from Moscatel (muscat) grapes.” According to “Alexis Lichine’s Encyclopedia of Wines and Spirits” (Alexis Lichine, ed., 5th ed., Alfred A. Knopf, Inc., 1987), “Pisco brandy” is brandy distilled from Muscat wine in Peru, Chile, Argentina, and Bolivia. Peru and Chile have

promulgated standards for the production of Pisco, which, under both countries' respective regulations, is distilled from grapes that were grown in delimited geographical areas.

TTB Regulatory Proposal

After reviewing the standards of identity in 27 CFR part 5, TTB's COLA database, and the laws and regulations of Peru and Chile, TTB has determined that amending § 5.22 is appropriate to clarify the status of Pisco under the standards of identity.

TTB believes that Pisco generally meets the U.S. standard for brandy and should be classified as a type of brandy. TTB also believes that evidence suggests that the generally recognized geographical limits of the Pisco-producing areas do not extend beyond the boundaries of Chile and Peru. The wine and spirits authorities cited above indicate that Pisco production is not associated with any areas outside of South America. COLAs naming "Pisco" as the brand name or fanciful name of a distilled spirits product are almost exclusively for products from Chile and Peru. TTB could not locate any COLAs naming "Pisco" as the brand name or fanciful name for any products from Argentina, or from any other country in South America with the exception of Peru, Chile, and Bolivia. COLAs for products from Bolivia that name "Pisco" as the brand name or fanciful name also use the term "Singani." "The Oxford Companion to Wine" defines "Singani" as an "aromatic grape-based spirit rather like pisco in that it is high in terpenes and made under a strictly controlled regime, principally from Muscat of Alexandria grapes" and a specialty of Bolivia (Robinson, p. 638). Bolivia

maintains standards for Singani production in Bolivia, but does not have standards for Pisco production.

Therefore, TTB proposes to amend the standard of identity in § 5.22(d) by adding Pisco as a type of brandy that is manufactured in Peru or Chile in compliance with the laws of the country of production regulating the manufacture of Pisco. The proposed amendment also recognizes the phrases “Pisco Perú” (with or without the diacritic mark, i.e., “Pisco Perú” or “Pisco Peru”), “Pisco Chileno,” and “Chilean Pisco,” as equivalent class and type names of the product, to reflect the provisions of the trade agreements. Further, if Pisco is recognized as a type of brandy, persons who distribute it in the United States will be entitled to label the product according to its type designation “Pisco” without the term “brandy” on the label, in the same way that a product labeled with the type designation “Cognac” is not required to also bear the class designation “brandy.”

TTB notes that the Peruvian standard allows products designated as Pisco to have an alcohol content ranging from 38 to 48 percent alcohol by volume, and the Chilean standard allows products designated as Pisco to have an alcohol content as low as 30 percent alcohol by volume. However, since the standard proposed in this document would identify Pisco as a type of brandy, and the U.S. standard requires that brandy must be bottled at not less than 40 percent alcohol by volume, any Pisco imported into the United States would have to conform to this minimum bottling proof requirement. A product that is bottled at below 40 percent alcohol by volume would fall outside this class and type

designation. Depending on the way that such a product is manufactured, it could be labeled as a “diluted Pisco” or as a distilled spirits specialty product bearing a statement of composition.

Finally, TTB believes that it is appropriate to remove both “Pisco brandy” and “Cognac” from § 5.22(k)(3), where they are listed as examples of geographical names that are not names for distinctive types of distilled spirits, and that have not become generic. Pisco will appear in new § 5.22(d)(9), where it will be a type of brandy defined as grape brandy manufactured in Peru or Chile in accordance with the laws and regulations governing the manufacture of Pisco of the country of manufacture.

Cognac currently appears in § 5.22(d)(2), where it is a type of brandy defined as “grape brandy distilled in the Cognac region of France, which is entitled to be so designated by the laws and regulations of the French Government.” The inclusion of “Cognac” in the list of examples of geographical names that are not names for distinctive types of distilled spirits, and that have not become generic, in § 5.22(k)(3) is duplicative and confusing. Accordingly, TTB proposes to remove the reference to Cognac in § 5.22(k)(3) as a technical correction to the regulations.

Effect on Currently Approved Labels

If finalized, this change to the regulations would revoke by operation of regulation any COLAs that specify “Pisco” as the class and type or brand name or fanciful name of distilled spirits products that are not products of Peru or Chile.

TTB has searched its COLA database, and believes that this rulemaking will affect only a small number of labels.

Public Participation

Comments Invited

We invite comments from interested members of the public on this proposed rulemaking.

Submitting Comments

Please submit your comments by the closing date shown above in this notice. You may submit comments in one of the following three ways:

- Federal e-Rulemaking Portal: You may send comments via the online comment form associated with this notice in Docket No. TTB–2012–0001 on “Regulations.gov,” the Federal e-rulemaking portal, at <http://www.regulations.gov>. A direct link to that docket is available under Notice No. 126 on the TTB Web site at <http://www.ttb.gov/spirits/spirits-rulemaking.shtml>. Supplemental files may be attached to comments submitted via Regulations.gov. For information on how to use Regulations.gov, click on the site’s Help tabs.
- U.S. Mail: You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.
- Hand Delivery/Courier: You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200–E, Washington, DC 20005.

Your comments must reference Notice No. 126 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB does not accept anonymous comments, does not acknowledge receipt of comments, and considers all comments as originals.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via Regulations.gov, please enter the entity's name in the "Organization" blank of the comment form. If you comment via mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider confidential or inappropriate for public disclosure.

Public Disclosure

On the Federal e-rulemaking portal, Regulations.gov, TTB will post, and the public may view, copies of this notice and any electronic or mailed comments we receive about it. A direct link to the Regulations.gov docket containing this notice and the posted comments received on it is available on the TTB Web site at <http://www.ttb.gov/spirits/spirits-rulemaking.shtml> under Notice No. 126. You

may also reach the docket containing this notice and its related comments through the Regulations.gov search page at <http://www.regulations.gov>.

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. TTB may omit voluminous attachments or material that the Bureau considers unsuitable for posting.

You and other members of the public may view copies of this notice and any electronic or mailed comments TTB receives on it by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20005. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact the TTB information specialist at the above address or by telephone at 202-453-2270 to schedule an appointment or to request copies of comments or other materials.

Regulatory Analysis and Notices

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

Regulatory Flexibility Act

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. chapter 6), TTB certifies that this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities. The propose rule would clarify the statue of Pisco under the standards of identity for distilled spirits and, if promulgated, will not impose, or otherwise cause, a

significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

Drafting Information

Karen Welch of the Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this notice.

List of Subjects in 27 CFR Part 5

Advertising, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

Amendment to the Regulations

For the reasons discussed in the preamble, TTB proposes to amend 27 CFR part 5 as follows:

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

1. The authority citation for part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

2. Section 5.22 is amended by:

- a. In paragraph (d) introductory text, removing the words “paragraph (d)(1) through (8)” and adding, in their place, the words “paragraphs (d)(1) through (9)”;

- b. In paragraph (k)(3), by removing the words “Cognac,” and “Pisco brandy,”; and

c. Adding new paragraph (d)(9) to read as follows:

§ 5.22 The standards of identity.

* * * * *

(d) * * *

(9) “Pisco” is grape brandy manufactured in Peru or Chile in accordance with the laws and regulations governing the manufacture of Pisco of the country of manufacture.

(i) “Pisco Perú” (or “Pisco Peru”) is Pisco manufactured in Peru in accordance with the laws and regulations of Peru governing the manufacture of Pisco.

(ii) "Pisco Chileno" or "Chilean Pisco" is Pisco manufactured in Chile in accordance with the laws and regulations of Chile governing the manufacture of Pisco.

* * * * *

Signed: February 3, 2012.

John J. Manfreda,

Administrator.

Approved: February 27, 2012.

Timothy E. Skud,

Deputy Assistant Secretary
(Tax, Trade, and Tariff Policy).

[FR Doc. 2012-7256 Filed 03/26/2012 at 8:45 am; Publication Date: 03/27/2012]